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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,061	04/04/2001	Mikiya Suzuki	32011-171032	1979
26694	7590	04/21/2005		EXAMINER
VENABLE, BAETJER, HOWARD AND CIVILETTI, LLP				PAYNE, DAVID C
P.O. BOX 34385			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20043-9998			2633	

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/825,061	SUZUKI, MIKIYA
	Examiner	Art Unit
	David C. Payne	2633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 December 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments with respect to claims 1-4 have been considered but are moot in view of the new ground(s) of rejection.
2. Note: The applicant incorrectly stated that claims 1 and 2 were rejected as lacking anticipation under 35 U.S.C 102 with respect to Fee. In the previous office action of August 5, 2004, claims 1 and 2 were rejected under 35 U.S.C. 103 (a) in view of Fee US 5,777,761.
3. First, regarding applicant's traverse of the prior art as lacking the newly added limitation, "... *transfer said transmission signals at fixed respective wavelengths*:"  
The Examiner contends that while Fee disclosed tunable transmitters in one embodiment (Figure 1, col.3 lines 63-67) and fixed transmitters with tunable filters in an alternate embodiment (Figure 3, col. 7 lines 19-30), to achieve 'agile networking', it certainly would have been obvious to one of ordinary skill in the art at the time of invention to use the more commonly general implementation of fixed transmitters in his protection system. One of ordinary skill in the art at the time of invention would conclude that Fee was aware of fixed transmitters if the goal of his invention was to produce an agile network with tunable lasers, and hence disclose the obviousness of such an invention as claimed to an artisan of ordinary skill.
4. Applicant's specification page 47, lines 3-9:

*In the above explanation, the auxiliary wavelength component was fixed; however, the system may be configured such that the auxiliary wavelength component can be selected so that, when determining optimal routes for all wavelength components, the auxiliary wavelength component is, for example, the wavelength component for which the evaluation result was lowest.*

Appears to allow transmission of wavelengths other than at prescribed fixed wavelengths as claimed and therefore demonstrate the non-criticality of the limitation.

Nonetheless, the new reference of Mao et al. US 6,111,675 is cited for the teaching of fixed wavelengths and external OAM&P stations.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fee US 5,777,761 (Fee) in view of Mao et al. US 6,111,675 (Mao).

Re claim 1, Fee disclosed

A wavelength division multiplex transmission system which distributes transmission signals to be transmitted among a plurality of wavelength components, converts said signals into WDM signals (e.g., col./line: 4/44-46), and transmits said WDM signals to a WDM transmission network, and which restores WDM signals from said WDM transmission network into said transmission signals (e.g., col./line: 2/28-35); comprising an optical transmission device and optical receiving device, in which said optical transmission device comprises an operating-system optical transmission unit and a standby-system optical transmission unit (e.g., col./line: 4/44-50 ), and said optical receiving device comprises an operating-system optical receiving unit and a standby-system optical receiving unit (e.g., col./line: 4/44-50); wherein either said operating-system optical transmission unit, or said standby-system optical transmission unit, or both, have optical transmission unit internal defect avoidance means which, upon the occurrence of a prescribed number or fewer of wavelength component transmission defects, executes avoidance of defects within said optical transmission unit

(e.g., col./line: 2/15-25). While Fee does not disclose the exact switching of auxiliary line cards for defect avoidance as does the applicant. Fee has disclosed equivalent structural elements, as does the applicant, see for example Figure 1. It would have been obvious to one of ordinary skill in the art at the time of invention that the components, which are duplicated and used in an auxiliary function as in Fee, could exist on separate line cards for the purposes of fault isolation.

Fee does not disclose wherein said operating-system optical transmission unit and said standby-system optical transmission unit transfer said transmission signals at fixed respective wavelengths. Mao disclosed using fixed wavelengths for the working and protection wavelengths (see e.g., col. 8 lines 49-59). It would have been obvious to one of ordinary skill in the art at the time of invention to use the Mao fixed wavelength scheme in the Fee invention since a fixed wavelength scheme is most simpler and cheaper to implement over a variable wavelength scheme. Furthermore, the fact that Fee disclosed the advantages of using a variable wavelength system does not teach against an ordinary skilled artisan from using such a system.

Regarding claim 2, the modified invention of Fee and Mao disclosed

A wavelength division multiplex transmission system in which said optical transmission unit internal defect avoidance means distributes the transmission signals which had been distributed to the wavelength component related to a defect to another, normal wavelength component, and causes said signals to be transmitted. (Fee, Figure 2)

Regarding claim 3, Fee disclosed a communication device (Figure 1) having defect detection means for detecting a defect in internal constituent members (Figure 2), but does not disclose when said defect detection means detects a defect, sends defect occurrence member information to an external maintenance member management terminal which performs management of maintenance members, supply processing, or similar.

Mao disclosed external Operations, Administration, Maintenance, and Provisioning (OAM&P) (110 of Figure 1, Col. 6 lines 5-10) system for managing failed components (e.g., col./line: 8/30-45). It would

have been obvious to one of ordinary skill in the art at the time of invention to use a central operations system to collect fault information for the benefit of providing a central place to monitor the operational state of the entire network as discussed in Mao.

Regarding claim 4, the modified invention of Fee and Mao disclosed  
A communication device in which said defect occurrence member transmission means sends said defect occurrence member information to the transmission network used by the communication device for normal communication (Mao e.g., col./line: 8/30-47)

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Payne whose telephone number is (571) 272-3024. The examiner can normally be reached on M-F, 7a-4p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on (571) 272-3022. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*M. R. Sedighian*  
**M. R. SEDIGHIAN**  
**PRIMARY EXAMINER**

Dcp